MONTANA LEGISLATIVE HISTORY

Chapter 10 1979

Bill H 6 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1/9	✓ C	Hearing Date(s)	1/18	✓ C
	1/12	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILLS

NO.	AUTHOR	SUBJECT	REFERRED TO
1	BARDANOUVE	APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-SIXTH LEGISLATURE.	SIGNED BY GOVERNOR 1/11/79
2	VINCENT, KESSLER, WALDRON, ET AL	TO ESTABLISH REFUND VALUES FOR BEVERAGE CONTAINERS SOLD IN MONTANA....	KILLED ON THIRD READING 2/23/79
3	HAND	TO REQUIRE PAWN BROKERS AND JUNK DEALERS TO RETAIN FIREARMS PURCHASED BY OR PLEDGED TO THEM FOR A MINIMUM OF THREE MONTHS.	KILLED IN BUSINESS & INDUSTRY 1/12/79
4	MARKS	TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HIGHWAYS.	SIGNED BY GOVERNOR 2/14/79 (CH. 23)
5	KVAALEN	TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO LIVESTOCK.	SIGNED BY GOVERNOR 2/9/79 (CH. 14)
6	SCULLY	TO REVISE THE LAW RELATING TO CRIMES.	SIGNED BY GOVERNOR 2/3/79 (CH. 10)
7	MANUEL	TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC UTILITIES AND COMMON CARRIERS.	SIGNED BY GOVERNOR 2/22/79 (CH. 43)
8	MARKS	TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO FISH AND GAME.	SIGNED BY GOVERNOR 2/22/79 (CH. 44)
9	LORY, VAN VALKENBURG	APPROPRIATING $135,000 TO BOARD OF CRIME CONTROL FOR PURPOSE OF FUNDING OPERATION OF THE MONTANA CRIMINAL LAW INFORMATION RESEARCH CENTER....	SIGNED BY GOVERNOR 5/7/79
10	KVAALEN	TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO STATE LANDS.	SIGNED BY GOVERNOR 2/9/79 (CH. 15)
11	KEYSER	TO RAISE THE PERSONAL INCOME TAX EXEMPTIONS AND RAISE THE MINIMUM INCOME REQUIREMENTS FOR FILING RETURNS.	KILLED ON SECOND READING 3/27/79
12	SCULLY	TO INSURE APPROPRIATE, ECONOMICAL, AND EFFICIENT USE OF ATTORNEYS BY THE EXECUTIVE	GOVERNOR VETOED 5/14/79

CHAPTER NO. 10

HOUSE BILL NO. 6

INTRODUCED BY SCULLY

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to Pre-Filed Bills.
January 12, 1979	Committee recommend bill do pass. Report adopted.
January 13, 1979	On motion rules suspended and bill placed on Second Reading this day.
	Second reading, do pass.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, passed.
	Considered correctly engrossed Transmitted to Second House.

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill concurred in as amended. Report adopted.
January 20, 1979	Second reading, concurred in.
January 22, 1979	Third reading, concurred in as amended.

IN THE HOUSE

January 22, 1979	Returned from Second House. Concurred in as amended.
January 23, 1979	Second reading, pass consideration.
January 24, 1979	Second reading, amendments adopted.
January 25, 1979	Third reading, amendments adopted.
	Sent to enrolling.
	Report correctly enrolled.

House BILL NO. 6

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CRIMES; AMENDING SECTION 45-2-101, MCA, TO CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply ~~in this title~~:

(1) "Acts" has its usual and ordinary ~~grammatical~~ meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

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(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction

authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(16) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(17) A "frisk" is a search by an external patting of a person's clothing.

(18) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss,

disadvantage, or injury to any person or entity in whose welfare he is interested.

(20) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(21) "Human being" means a person who has been born and is alive.

(22) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(23) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(24) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition ~~shall~~ does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(25) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(26) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(27) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable

of appreciating the nature of his conduct.

(29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(31) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or ~~if~~ when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(32) "Obtain" means:

(a) in relation to property, to bring about a transfer

of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(34) "Occupied structure" means any building, vehicle, or other place ~~suited~~ suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(35) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(36) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(37) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for

the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(39) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(40) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any

level of responsibility.

(42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(47) "Premises" includes any type of structure or building and any real property.

(48) "Property" means anything of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.

(49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has ~~not~~ no authority to defeat or impair, even though the offender himself may have an interest in the property.

(50) "Public place" means any place to which the public

or any substantial group thereof has access.

(51) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(52) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(53) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(54) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the

purpose of arousing or gratifying the sexual desire of either party.

(55) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(56) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(57) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(58) "Statute" means any act of the legislature of this state.

(59) "Stolen property" means property over which control has been obtained by theft.

(60) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(61) "Tamper" means to interfere with something

improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(62) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(63) (a) "Value" means the market value of the

property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be ~~deemed~~ considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be ~~deemed~~ considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection (63)(a) above, its value shall be ~~deemed~~ considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining

the value of the property.

(64) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(65) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(66) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Repealer. Section 34-112, R.C.M. 1947, is repealed.

-End-

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LC 0025

1979 Legislature
Code Commissioner Bill - Summary

House Bill No. 6

AN ACT TO REVISE THE LAW RELATING TO CRIMES; AMENDING SECTION 45-2-101, M C A , TO CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112, R.C.M. 1947.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 45-2-101. In lead-in, deleted "in this title". The phrase was added for uniform style by code commissioner bill in 1977. However, the phrase narrowed the application of this definition section and therefore worked an inadvertant substantive change.

In (1), deleted "grammatical" from the term "usual and ordinary grammatical meaning". "Grammatical has nothing to do with meaning and is superfluous in this context. Other grammatical or style changes were made in (12),(24), (30), (31), (34), (36), (49), and (63).

Section 2. 34-112. Repeal. The subject covered by this section, enacted in 1895, is also covered by 45-6-301 of the 1973 Criminal Code relating to theft.

HOUSE JUDICIARY COMMITTEE

46TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 4	Revise and clarify, relating to highways.	1/4	Marks	Tues 1/9	do pass	1/12
HB 5	revise & clarify, relating to livestock	1/4	Kvaalen	Tues 1/9	do pass	1/12
HB 6	revise the law relating to crimes.	1/4	Vincent	Tues 1/9	do pass	1/12
HB 7	revise & clarify, relating to public utilities & common carriers.	1/4	Manuel	Tues 1/9	do pass amended	1/12
HB 8	revise & clarify, relating to fish & game	1/4	Marks	Tues 1/9	do pass	1/12
HB 10	revise & clarify relating to	1/4	Kvaalen	Weds 1/10	do pass-amended	1/12

JUDICIARY COMMITTEE
January 9, 1979

The meeting was called to order at 8 a.m. by Chairman Scully in room 436 of the Capitol Building on Tuesday, January 9. Representatives Seifert and Teague were excused, all other members were present.

Scheduled for hearing were House Bills 4, 5, 6, 7 and 8.

HOUSE BILL #5: Dave Cogley: Legislative Council I worked with the commissioner on this bill. In the process of recodifying we were also mandated to correct problems, such as outmoded wording, archaic language, laws out of date, spelling, etc. These are the clean-up bills for the codes. Mr. Cogley went through the bill, explaining the changes that were made and explained the green sheets included with the bill. He explained the changes and references to this act. They can now simply refer to the appropriate place in the code. He mentioned the change in wording in some areas. Such as the addition of lower jaw skin, in section 5, and explained the reasoning. He mentioned the change in section 6 concerning the license money, and that part of the money still goes to the county. The next two sections were a conglomerate and apply to manufactured dairy products law. On page 20, line 25 is the definition of person. Questions followed.

REPRESENTATIVE CONROY: This is a bill regarding the land laws. Will we now refer to the law about cattle inspection within 48 hours in here, or would that be in another bill.

DAVE COGLEY: Is there a problem with that law?

REPRESENTATIVE CONROY: No.

DAVE COGLEY: This is just one specific section that had problems.

REPRESENTATIVE KEEDY: Discussed title 45, relative to this bill.

DAVE COGLEY: I feel it was necessary to have a penalty. More discussion followed.

REPRESENTATIVE ROTH: On line 9, page 9, is this new language?

DAVE COGLEY: It is a little nicer way of stating what we want to say. He went on to explain the reasoning behind it.

There was no further discussion and the hearing closed on HB #5.

The hearing opened on HB #4.

DAVE COGLEY: This bill will revise and clarify the laws relating to highways. There were some other sections that were added. He went through the bill and explained the changes. He explained that it was in conflict with federal law and was brought into line. The U.S. codes were recodified. He went over Title 23 of the U.S. code and explained the Montana Traffic Safety Act.

JIM BECK: DEPARTMENT OF HIGHWAYS. This bill is perfectly satisfactory with me, and we support the bill.

REPRESENTATIVE KEMMIS: Is there some way we will catch a recodify by the federal government to take care of this, (the fact that if they should recodify and Montana did not, they would again be in conflict).

Dave stressed that they intended to keep track of such action.

REPRESENTATIVE EUDAILY: Shouldn't the section on snowmobiles be in the fish and game instead of here. It seems to me it should be covered there.

DAVE COGLEY: No, and he went on to explain the reasoning.

The hearing closed on House Bill #4.

HOUSE BILL #6: The hearing opened on House Bill #6.

JOAN MAYER: There are only two sections in this bill. We inadvertently changed the title and this will restore the wording the way it was before the 1977 session. Mostly the changes were in style and grammar, and the rest is the repealer. She explained that.

The hearing closed on House Bill #6.

HOUSE BILL #7: The hearing opened on House Bill #7 with Larry Weinberg stating that he was with the legislative council and he was responsible for the laws on public utilities and common carriers. He said this was the longest of the bills. This is a mass of very old laws. Because of the length of the bill I will go through it and hit only the high points and you can stop me at any point if you have a question, but you should take the bill and study it yourself. During the recodification process we attempted to change the references so that everyone would know what we were talking about. If we were

JUDICIARY COMMITTEE
Executive session
Friday, January 12, 1979

The executive meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Friday January 12. All members were present except Representatives Holmes and Seifert, excused. Representatives Teague and Lory came in late.

HOUSE BILL NO. 4: Representative Keyser moved "do pass". The motion carried with the vote unanimous. Representative Keyser moved that the bill be placed on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 5: There was general discussion about page 8 (title 45) The question was raised whether it would apply.

Representative Kemmis moved to strike Section 7 in its entirety. Page 7, line 16, through page 8, line 4 and renumber subsequent sections. The motion failed.

Representative Lory moved "do pass". The motion carried with the vote unanimous. He then moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 6: Representative Eudaily moved "do pass". The motion carried with the vote unanimous. Representative Eudaily then moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

The committee was recessed at 8:30 to hold the regular meeting.

8:55 a.m. (meeting resumed)

HOUSE BILL NO. 7: Representative Eudaily moved on Page 17, lines 5 and 6 to strike: "soldiers or sailors" and insert: "military personnel". The motion carried with the vote unanimous.

Representative Eudaily moved, on page 62, line 6, following: "admit" strike: "of". The motion carried with the vote unanimous.

Representative Holmes moved "do pass as amended". The motion carried with the vote unanimous. Representative Day moved to place on the consent calendar. The motion carried with the vote unanimous.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 18, 1979

The tenth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink on the above date at 10:03 a.m. in room 331.

ROLL CALL:

All members were present with the exception of Senator Mike Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 41:

Bob Pyfer, Staff Attorney for the Legislative Council, gave an explanation of this bill, which is an act to generally revise the laws relating to estates, trusts, and fiduciary relationships. He emphasized sections 3, 27 and the repealers. Senator Turnage questioned repealing section 93-1401-3 and said he felt better with secondary evidence in the act. Senator Turnage moved to amend the bill on page 29, line 10 by striking the words, "and 93-1401-3," and to so amend the title. The motion carried unanimously.

Senator Turnage asked some questions of Tom Stoll, the administrator of the inheritance tax division of the Department of Revenue, particularly in regard to repealing sections 91-523 and 91-519. Mr. Stoll replied that when the preceding sections were repealed, that he thought that these sections did not apply anymore. Senator Turnage questioned Mr. Stoll in connection with the amendment there and Mr. Stoll replied that they had no problem with this amendment, that they had been having a problem for twenty years and that this would help clear it up.

Senator Turnage and Senator Towe questioned on page 14, section 22, the material "Recorded papers evidencing a transfer". Senator Turnage felt that the words "is considered" would make a difference and maybe should be "consistent". Mr. Pyfer explained that "shall be deemed" is the original language and that this change was just for style. Senator Turnage was concerned about transfer evidence that is not recorded. Mr. Pyfer said this was prima facie proof at the time the transfer was recorded and this was just a clarification. Mr. Stoll stated that they always interpreted prima facia evidence as the date of transfer and later on, if after death, to have been made by will. Senator Towe wondered how the department handled this where on one hand prima facie evidence of transfer is recorded and on the other hand the transfer is recorded after death. Mr. Stoll explained that this is handled as if it were a transfer at death. Their interpretation is that it is valid.

Senator Towe said he felt that this really didn't change the meaning and that he felt the bill was alright. Mr. Stoll and the committee agreed.

DISPOSITION OF HOUSE BILL 41:

Senator Turnage moved that House Bill 41 be concurred in as amended. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 6:

Joan Mayer, attorney for the Legislative Council gave an explanation of this bill, which is an act to revise the law relating to crimes. Senator Turnage asked if this applied only to criminal code. Ms. Mayer answered in the negative, saying that this would apply to all codes by changing "in this title" on page 1, line 16. She explained that they need these definitions elsewhere also. Senator Turnage felt that it was wrong to have criminal definitions crop up in the regular codes. Ms. Mayer said that this is the way it was originally written.

Senator Towe said that the definition of a home in a criminal action would certainly be different than the definition of a home in a tax matter.

Senator Turnage moved that on page 1, line 16, we insert the words "in this title" following word "title". The motion carried unanimously.

There was much discussion concerning repealing section 34-112, but it was decided that this was covered in other places in the codes.

DISPOSITION OF HOUSE BILL 6:

Senator Turnage moved that this bill be concurred in as amended. The motion carried unanimously.
There being no further business, the meeting was adjourned at 11:05 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

STANDING COMMITTEE REPORT

January 18, 19 79

MR. Presidant:

We, your committee on Judiciary

having had under consideration House Bill No. 6

Respectfully report as follows: That House Bill No. 6

third reading, be amended as follows:

1. Page 1, line 16.
Following: "~~title~~"
Insert: "in this title"

And, as so amended
BE CONCURRED IN
~~DO PASS~~

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

H.C.

Date 1/18/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			✓
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

SENATE Judiciary COMMITTEE

BILL HB-41 VISITORS' REGISTER DATE

HB-6

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OP
Tom Stoll	Dept of Revenue	HB-41	✓	
Margaret Davis	League of Women Voters			
Bob Pyfer	Code Commissioner	HB41		
Tom Ritter	Senate Aid	HB41-6		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

HOUSE BILL NO. 6

INTRODUCED BY SCULLY

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO CRIMES; AMENDING SECTION 45-2-101, MCA, TO CLARIFY ITS APPLICATION; AND REPEALING SECTION 34-112, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply ~~in this title~~ IN THIS TITLE:

(1) "Acts" has its usual and ordinary ~~grammatical~~ meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction

authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(16) "Forcible felony" means any felony which involves the use or threat of physical force or violence against an individual.

(17) A "frisk" is a search by an external patting of a person's clothing.

(18) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss,

disadvantage, or injury to any person or entity in whose welfare he is interested.

(20) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(21) "Human being" means a person who has been born and is alive.

(22) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(23) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(24) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition ~~shall~~ does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(25) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(26) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(27) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable

of appreciating the nature of his conduct.

(29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(31) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or ~~if~~ when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(32) "Obtain" means:

(a) in relation to property, to bring about a transfer

of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(34) "Occupied structure" means any building, vehicle, or other place ~~suited~~ suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(35) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(36) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(37) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for

the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(39) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(40) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any

level of responsibility.

(42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(47) "Premises" includes any type of structure or building and any real property.

(48) "Property" means anything of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.

(49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not no authority to defeat or impair, even though the offender himself may have an interest in the property.

(50) "Public place" means any place to which the public

or any substantial group thereof has access.

(51) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(52) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" an- "with the purpose" have the same meaning.

(53) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(54) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the

purpose of arousing or gratifying the sexual desire of either party.

(55) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(56) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(57) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(58) "Statute" means any act of the legislature of this state.

(59) "Stolen property" means property over which control has been obtained by theft.

(60) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(61) "Tamper" means to interfere with something

improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(62) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(63) (a) "Value" means the market value of the

property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection (63)(a) above, its value shall be deemed considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining

the value of the property.

(64) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(65) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(66) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Repealer. Section 34-112, R.C.M. 1947, is repealed.

-End-